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TRIAL OF PATENT CASES IN OPEN COURT

The tendency to dispense with the slow and costly intervention of Masters is daily increasing into a fixed custom of conducting all litigation directly before the bar of the court instead of in the unregulated privacy of the Master's chamber. Federal Equity Rule 59 is substantially mandatory as to chancery in the federal courts, and was so intended. It will eventually be followed with the strictness it deserves at the hands of conscientious judges, supported by a friendly and militant bar and stimulated by a determined popular demand by lay business men.

Mr. George P. Dike, in Harvard Law Review (Vol. 36, p. 33, Nov., 1922), makes an interesting and instructive argument for the application of the principle in patent cases, as to the money decree, as well as the merits decree. While one must leave the highly technical issues directly involved in discussions concerning patents, to the experts who follow that law, it is permissible to pass judgment on the practical machinery designed to administer it. One, therefore, is disposed to endorse and even to applaud the views of Mr. Dike, for he seeks simplicity, directness and economy.

Practically his suggestions are quite possible and promise a result that is as amazing as it is beneficial. United States District Judge Rose of Baltimore, an experienced teacher, author, lawyer and judge, seems to have the courage of his convictions in all matters of simplifying and reducing the expense and time of trials. He is a good Judge to observe and follow. It is not surprising that he "accepted the suggestion as within the spirit of the new equity rules, which were then something of a novelty". It turned out that the trial leading to the money decree, that is the ascertainment of the measure of damage, took only one day, "and the entry of the decree * * * was within forty days of the receipt of the mandate of the Circuit Court of Appeals". The Appellate Court had affirmed a decree on the merits that had been appealed from the District Court, so that the ascertainment of damages was the only issue left.

Mr. Dike contrasts this promptness and brevity and absence of expense with another case where a reference to a Master was had. The decree for the accounting was entered 18th of February, 1902, and the Master's report was filed 20th of October, 1907. The final decree was entered 23rd of January, 1908, or *six years thereafter.* This doubtless was an extreme case, but it evidences possibilities. While the delay was inexcusable the costs were crimnial. "The typewritten report of the testimony", said Mr. Dike, "filled several large columns. The total expenses of both parties were certainly greater than the amount of the award, which was a little over $11,000.00 * * *. Two days, or three, at the outside, would have sufficed to try the whole case in open court." Let us consider what that means to critical, practical and observant laymen. Let us consider whether there be any possible excuse for it, except habit—we will not say precedent.

Aside from these economic and psychological thoughts there are other and cogent reasons, why the spirit of Equity Rule 59 should be applied in all cases not expressly forbidden by statute. In the first place the juridical spirit of the American Constitution (7th Amend.) calls for the direction of a judge in all trials. (Hof. v. Capital Co., 174 U. S. 1; Spirit of the Courts, p. 200). The power and duty of the judge of "directing and superintending" trials inheres in the thing itself. There can be no orderly trial without the directing

guidance and limitation of the judge. The taking of testimony in the absence of a judge, is in fact though probably not in law, a deprivation of a Constitutional right. Moreover it often jeopardizes one's rights. The evidence adduced is, of course, the body and soul of the trial. It should be confined within the issue made out by the pleadings. The law to fit the facts becomes a secondary, not a primary matter. Else one might be guilty of preparing a case to suit his fancy. Shall we say suborning testimony?

The measure of the manner and quality of facts having probative value thereby becomes more or less a technical question. Materiality and relevancy are of grave importance. A correlated condition is the presence of an officer clothed with appropriate power to confine it within legal limits. Viewed from a purely economic standpoint, ignorance, lack of confidence, fear or cupidity may run the record into thousands of words, where hundreds would have sufficed. But this is not always merely a matter of inconvenience or expense. As has been intimated, justice is often cheated or defeated through its agency.

We may usefully quote from "Spirit of the Courts" (pp. 243, 4), citing and quoting Blackstone on the question of taking testimony out of the presence of the judge: "Mr. Blackstone's condemnation of depositions, spoken more than a century ago, might have been written for the benefit of this generation, as they will be profitably read by generations yet unborn. The American lawyer cannot perform a more patriotic service than in seeing to the enforcement of principles considered by him of first importance. Said he (Ek. 3, p. 374): 'The open examination of witnesses viva voce, in the presence of all mankind, is much more conducive to the clearing up of truth than the private secret examination taken down in writing before an officer or his clerk in the ecclesiastical courts and all others that have borrowed their practice from the civil law, where a witness may frequently depose that in private which he will be ashamed to testify in a public and solemn tribunal. There an artful or careless scribe may make a witness speak what he never meant, by dressing up his depositions in his own forms and language; but he is here at liberty to correct and explain his meaning, if misunderstood, which he can never do after a written deposition is taken. Besides, the occasional questions of the judge, the jury and the counsel, propounded to the witness on a sudden, will sift out the truth much better than a formal set of interrogatories previously penned and settled; and the confronting of adverse witnesses is also another opportunity of obtaining a clear discovery, which can never be had upon any other kind of trial. Nor is the presence of the judge during the examination a matter of small importance; for, besides the respect and awe with which his presence will naturally inspire the witness, he is able by use and experience to keep the evidence from wandering from the point in issue. In short, by this method of examination, and this only, the persons who are to decide upon the evidence have an opportunity of observing the quality, age, education, understanding, behavior and inclinations of the witness; in which points all persons must appear alike when their depositions are reduced to writing and read to the judge in the absence of those who made them; and yet as much may be frequently collected from the manner in which the evidence is delivered as from the manner of it. The new Federal equity rules have set a precedent by which the States will undoubtedly profit at the instance of an alert bar."

The application of the principle would appear to be a matter lying in the will and disposition of the trial judge. No additional statutory law seems to be needed. Certainly § 4921 does not forbid it, if it

does not expressly authorize it. Judge Julius M. Mayer of New York, in his address, "The Judge and the Patent Case", greatly clarified the situation. It is quite possible that the urgent demand for simplification of procedure, through scientific rules of court, will eventually affect Congress. Chief Justice Taft's proposed Commission will solve this and many other difficult procedural problems.

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NOTES OF IMPORTANT DECISIONS

PICKETING NOT UNLAWFUL—In the case of People v. Arko, et al., decided by the Court of Special Sessions of the City of New York, not yet reported (see N. Y. Law Journal, Oct. 21, 1922), the Court holds that strikers walking up and down in front of a restaurant without causing a crowd to congregate and without disturbing the peace, are not guilty of disorderly conduct, and that mere picketing is not unlawful. The testimony against the defendants was as follows:

According to the testimony of the patrolman Egan, defendants and another man "congregated" (although there is no positive statement of fact that they stopped) in front of No. 8613 Boulevard, Rockaway, at about 12:34 P. M., on May 28, 1922, and while picketing they obstructed the sidewalk in front of Weiner's Bakery and Lunchroom, where a strike of the employees had taken place. The policeman saw them there about five minutes, and he states that they walked "up and back together about once both ways. There were four men altogether there. One was an orderly fellow; he was orderly, doing everything that was right. Two of them had signs on, carrying them sandwich fashion; the signs read (red letters): 'Strike'; (black letters): 'Weiner's Bakery'. They were moving up and down the street in front of his store." In fact, on behalf of the defendants it is stated that they did not stop, except for a drink at a nearby soda stand. It is plain that they were always on the move. The officer further testified, in substance, that sometimes the defendants walked two abreast and sometimes three directly opposite the bakeshop in question, where the walk is narrowest, about four feet in width, so that the pedestrians using the highway at that point had to walk in the gutter in order to pass them. Although the officer saw the defendants only five minutes, most of which the time the officers were engaged in conversation with them, one of the defendant's witnesses admits that defendants picketed about fifteen or twenty minutes. On cross-examination, this officer testified as follows: "No crowd collected, except the people that were walking up and down; they couldn't pass; they had to walk into the gutter." It is reasonably certain that whatever crowd congregated at that spot was caused by the arrival and conduct of the police. Sergeant Murphy, on behalf of the People, testified: "I arrested them for obstructing the sidewalk—not for picketing."

The theory of the prosecution is obvious, from the statement of the district attorney at the trial. He said: "We can disregard the strike and everything else, but the fact that the sidewalk is only four feet wide and these men walked two by two, blocking the sidewalk, is disorderly conduct." The learned trial Judge at page 5, stenographer's minutes, said: "I say they have the right to lawfully picket, but they cannot exaggerate it. They can do so in a lawful manner. They can induce anybody in that bakery in a lawful manner to leave."

We quote the following from the opinion, by Freschi, J.:

"The defendants had a right to use the sidewalk, a public thoroughfare; they committed no wrong of a public character in carrying these particular signs on their shoulders, except possibly Sabbath breaking. The wording of the signs is not the gist of this offense. There is no claim that it is improper. Even picketing is not unlawful, provided that it does not transgress the rights of others or disturb the public peace (Segenfeld v. Kalin & Friedman, 117 Misc., 731).

"There is a common right in all alike to the use of the public highways with as little hindrance and interference as is possible under the prevailing traffic conditions of these times. Manifestly, every use of a sidewalk, even a temporary one, is a partial obstruction with respect to others, which cannot be prevented. Of necessity this must be so. But how far this may be permitted to go is, in some instances and under certain circumstances, a moot question, and courts and judges are bound in observing the right of the parties to act in the exercise of a sound discretion with great caution, lest they set up arbitrary standards and enunciate doctrine that will interfere with the ordinary limitations of personal liberty by creating new ones that may be oppressive and unjust. While freedom of locomotion is one of such liberties, yet pedestrians must observe the common amenities of the road and exercise their rights so as not to cause others to suffer unnecessary delay or inconvenience; and, where the conduct of parties in the use of the

street may lead to clashes or conflicts tending to a breach of the peace, then on sufficient evidence of that fact the trial judge may find the accused guilty. By experience we know how misunderstandings are likely to arise in so-called strike cases, and it is always wise for the police to resort to every reasonable and tactful expedient and method to enforce obedience to the law and the observance of rights of the public, including those of the strikers; and whenever it is shown that there has been an obstinate and wanton disregard of the public comfort and welfare, it may, with a show of reason, be held that such conduct is offensive to public good order."

ISSUANCE OF THRIFT BONDS BY NATIONAL BANK NOT ULTRA VIRES.—A national bank isued $100 "thrift bonds", payable in 20 years, for $50 cash. Either the bank or holder had the privilege after 60 days' notice of cashing or redeeming them on payment of the original price, plus 3½ per cent compound interest. Held, in Adams v. Compo Bond Corporation, 282 Fed. 894, by the District Court, Southern District New York, that this was not *ultra vires* on the part of the bank, as these bonds are more in the nature of ordinary certificates of deposit than a borrowing in large sums from persons other than depositors. We quote from the opinion by Judge Augustus N. Hand as follows:

"I have considered this somewhat novel instrument, and can see no essential difference in effect between it and an ordinary time certificate of deposit for $50, at 3½ per cent compounded, with appropriate provisions for surrender and cancellation. Indeed, it does not differ from any deposit which draws interest, except that the money can only be withdrawn on 60 days' notice if the bank cares to insist upon its rights. The relation between the bank and this bondholder, as between it and its check depositors and holders of certificates of deposit, is that of debtor and creditor. The rate of interest may or may not be a subject of debate, but I do not understand that in itself it is objected to here.

"It is said that a national bank should lend and not borrow money; but, as was pointed out in Wyman v. Wallace, 201 U. S. 230, 26 Sup. Ct. 495, 50 L. Ed. 738, it may in proper cases and in the normal course of its business borrow money. See Auten v. United States Bank, 174 U. S. 141, 19 Sup. Ct. 628, 43 L. Ed. 920; Aldrich v. Chemical National Bank, 176 U. S. at page 627, 20 Sup. Ct. 498, 44 L. Ed. 611. Of course, it borrows money every time it receives a deposit. State v. National Bank of Orleans (C. C.), 88 Fed. 947. This bond does not substantially differ from an ordinary certificate of deposit, and comes within none of the cases which have criticized borrowing. The kind of borrowing objected to is, I think, borrowing in large sums from persons not in the recognized class of depositors. The latter (among whom would, I think, be holders of these Compo thrift bonds) are likely to maintain something like a stable average of deposits; whereas a large lender, whether on time or call, would seem more inclined than small depositors to demand his money, if rates of interest became high and chances for investment became more favorable in other directions. In my opinion, counsel for defendants are right in saying that the kind of borrowing which has been criticized has been borrowing not resulting in deposits, and not, therefore, in the ordinary course of banking business; and the more the Compo bonds are examined the more clearly they appear to be of the substantial nature of ordinary certificates of deposit."

AMUSEMENT DEVICE AS INHERENTLY DANGEROUS.—Amusement device in the operation of which a seat is tipped forward so that occupants slide off from seat and onto top roller in chute, and thence downward over other rollers successively, with a bump between each two, until they roll over the lowest and arrive with a final bump upon the ground floor, the rollers revolving only by the impulse and weight of the persons sliding over them, held, in Godfrey v. Connecticut Co., Supreme Court of Errors of Connecticut, 118 Atl. 446, not inherently dangerous either in itself or in its operation. This action was founded on the "dangerous construction and negligent application" of the device in question, but there was no evidence of negligence in its operation, so the sole question was whether the device was dangerous in itself. The trial court, so found, but on appeal the lower court was reversed, the appellate court in part saying:

"But in its finding the Court has qualified the term 'inherently dangerous' by which it characterizes the device, by the words 'as operated'. It is fair to assume that the Court thus intended to express its conclusion that the device was dangerous when in motion and use. If that be the meaning which should be given to this language, we do not discover any evidence that, when the contrivance is in operation in the customary manner and for the purpose for which it was designed, there is any reason to anticipate that it will harm any one. The mere possibility of injury, through some cause or condition not reasonably likely to occur, does not justify the classification of an instrument as dangerous in itself or in its operation. A locomotive engine is not dangerous either when at rest or when in motion unless it be made so by reason of negligence or because of some occurrence not reasonably to be expected. The railroad company may be liable for an injury caused by negligence, but not for one due to the latter cause. In the operation of this contrivance it is admitted that there was no negligence; and it does not appear nor is it suggested that there was any reason to anticipate that in its proper use it would be likely to harm any person. It is said in the finding that at the bottom of the rollers the plaintiff received a severe blow which

caused his injury; but it is not stated that this blow was inflicted by reason of any fault in the construction or method of operation of the contrivance, nor in fact is any reason or cause indicated. None is to be found in the evidence which is a part of the record. The Otisco Company was not an insurer of its patrons. The only duty which rested upon any of the defendants was to use reasonable care to make and keep these premises and the amusement apparatus thereon reasonably safe for the visitors who were invited to enter and use them."

RECENT DECISIONS OF THE BRITISH COURTS

We deal in this article at rather more length than usual with two recent cases of some novelty in regard to breach of contract. The decision of the Court of Appeal in Longbottom Co., Ltd., v. Bass Walker & Co., W. N. 245, is of great commercial importance. The provisions of the Sale of Goods Act 1893 dealing with installment delivery are:

Section 31 (2). "Where there is a contract for the sale of goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract or whether it is a severable breach giving rise to a claim for compensation, but not to a right to treat the whole contract as repudiated."

Section 38 (1). "The seller of goods is deemed to be 'unpaid seller' within the meaning of this Act:

(a) "When the whole of the price has not been paid or tendered;

(b) "When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonor of the instrument or otherwise.

Section 39 (1) "Subject to the provisions of this Act, and of any statute in that behalf, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has by implication of law:

(a) "A lien on the goods or right to retain them for the price while he is in possession of them;

(b) "In case of the insolvency of the buyer, a right of stopping the goods in transit after he has parted with the possession of them;

(c) "A right of re-sale as limited by this act.

Section 41 (1). "Subject to the provisions of this act, the unpaid seller of goods who is in possession of them until payment or tender of the price in the folowing cases, namely:

(a) "Where the goods have been sold without any stipulation as to credit;

(b) "Where the goods have been sold on credit, but the terms of credit has expired.

(c) "Where the buyer becomes insolvent.

(2) "The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee or custodian for the buyer."

The plaintiffs were manufacturers and the defendants were merchants. The plaintiffs agreed to sell to the defendants 147 pieces of cloth. Payment was to be made on the defendants' payday each month for goods invoiced up to the 19th of the previous month. The complete range of designs was to be delivered as soon as possible, and the balance of goods was to be delievered in or about June or July, 1920. Before the end of July the plaintiffs delivered all the goods except 37 pieces. The defendants repudiated liability to accept these pieces on the ground that they were not delivered within the time named in the contract.

The plaintiffs replied *inter alia* they were entitled to withhold delivery because the defendants had been, and were, at least a month late in their payments, and that while the plaintiffs were exercising their rights to withhold delivery the defendants had broken their contract by refusing to accept any further goods.

Lord Justice Atkin treated this contract as indivisible; it was a contract for the sale of a specified quantity of goods, which could only be performed by delivery and acceptance of the whole of the goods. He pointed out that Section 31 (2) of the Sale of Goods Act only applied to delivery by stated installments to be separately paid for. Here there were no stated installments; the buyers could not have claimed to have any particular delivery to be paid for as made, but all deliveries made up to the 19th of a month to be paid for on the 20th of the next month.

The buyers were in arrears with their payments, therefore the sellers within Section 38 (1) of the Act; and under Section 41 of the Act they had the right to retain possession since the goods had been sold on credit and the time of credit had expired. Alternatively, they had under Section 39 (1) the right to withhold "delivery".

The difference between retaining possession and withholding delivery was explained to be that possession might be retained where the goods had passed to the buyers this would be an exercise of the right of lien; if the property had not passed it would be a simple retaining of possesion. The right of withholding delivery went further than this and would apply to cases where the goods had not yet come into existence. If the seller is unpaid for the goods already delivered under the contract he can withold delivery of future installments. Lord Justice Atkin expressed the opinion that one object of this provision in Section 41 is to protect a vendor from expense in manufacturing or acquiring goods, payment for which was justly in doubt. The defendants repudiated liability to accept the 37 undelivered pieces, because they were not, as stipulated in the contract, delivered before the end of July. But the Court of Appeal held that, as the plaintiffs being unpaid sellers, were acting within their rights in witholding delivery till the payments due had been made in accordance with the contract, it was immaterial, so far as the buyers were concerned, that the goods might not have been in existence when the time arrived for delivery under the contract. The defendants were not, therefore, entitled to repudiate liability for the undelivered portion as they did in November, and the plaintiffs must be held entitled to damages, to be assessed, in default of agreement between the parties, by an Official Referee.

The other question to which we call attention is that of the constructive repudiation of a contract so as to entitle them to damages as for breach. The House of Lords have lately issued judgment in a case (Forslind v. Bechely Crundel) which turned upon this doctrine—a doctrine which is not often applied, but which is well established in law. The point has in fact been clearly settled by a series of decisions of which Freeth v. Burr (1874, L. R., 9 C. P. 208) and the Mersey Steel and Iron Co.'s case (1884, 9 A. C. 434) are the most important. If one of the parties to a contract either in express terms or by conduct leads the other party to the reasonable conclusion that he does not mean to carry out the contract, this amounts to a repudiation which will justify the other in treating the contract as at an end and claiming damages on that footing without waiting for the time when, by the contract, performance was to have taken place.

Each case, of course, depends on the question of fact whether the conduct of a particular party to a contract amounts to repudiation —not express, but constructive. The question of fact fails to be determined by consideration of the circumstances and of the action of the respondent in these circumstances. It is a question on which the judge who sees the parties and hears their witnesses as well as reads the documents, is in the best position for disposing of what is in this sense really a question of individual conduct. For the law on the subject is not obscure. In Scotland, as in England, it is that the plaintiff is dispensed from waiting for the arrival of the stipulated period for performance if the defendant has intimated in advance an intention to refuse to perform his obligations under it, and the pursuers elect to treat this as an entire breach and to act on it. If the defendant has behaved in such a way that a reasonable person would properly conclude that he does not intend to perform the obligations he has undertaken, that is sufficient. The defendant's words and the state of his mind are less important than the intention to be gathered from what he does, as evidenced by his attitude.

In the case we are discussing the judge of first instance found that there had been repudiation, but on appeal this decision was reversed, but the House of Lords restored the decision of the trial judge. Lord Dunedin puts the ground of their Lordships' judgment in a nutshell:

"I think that, if I may use the expression, the respondent assumed such a shilly-shallying attitude in regard to the contract, that the appellant was entitled to draw the inference that the respondent did not really mean to fulfill his part of the contract timeously, although he might, if he found it suited him, go on to deliver. Such conduct, I think, amounted to a repudiation which entitled the appellant to say he would no longer be bound."

One may easily figure a case in which a party in infer repudiation from such conduct he was to proceed to perform it or not; or he might begin work and so carry it out as to be really trifling with the position. It is but right that the law should allow the other party to infer repudiation from such conduct The law as developed in Forslind's case may be concisely stated thus, that where one party to a contract treats the non-performance by the other of the latter's obligations as equivalent to a repudiation of the contract, then—(1) The conduct so treated must not be in some incidental or accidental particular, but it must fundamentally affect the fair carrying out of the bargain as a whole; and (2) The burden of proving that it does so, rests upon the person putting forward that plea.

Glasgow, Scotland. DONALD MACKAY.

A NOTABLE LAW SUIT

By John E. Ethell of Denver, Colo.

One day early in the spring of 1871, three men stood talking by the banks of a little creek in the then territory of Colorado. They were discussing the feasibility of taking the waters of the creek to irrigate their ranches located further down the creek. Their names were Yunker, Nichols and Bell. The creek was called Bear Creek, which rippled and flung its way merrily, in ordinary times, down from the high mountains to the west to the dry plains to the east. At other times, when the clouds seemed to burst and pour out huge quantities of water along the course of the creek, it roared and hurled itself about, carrying huge stones and whatever came within its grasp, down to the lower levels.

Very few settlers, in those days, carried on the business of ranching along the banks of this stream. Now, beautiful ranches and garden farms and lovely homes grace its banks. Further up in the Bear Creek Canyon, attractive cottages, club houses and villages nestle along the stream, delightful retreats for city dwellers during the summer months and for autoists and campers.

All about the three men was a dry and thirsty land. Francis Parkman, when he journeyed southward from old Fort Laramie to the Pueblo, in the late forties, passed near this spot which he describes so well in his Oregon Trail. But these lands needed then, as they do now, the waters of the streams in order to make them fruitful and worth while. Little rain fell in this country, either on the just or the unjust; not enough to give life and vitality to the crops which might be planted there. But, not far away to the west the great mountains of the Rockies gathered to their bosom the winter snows, which, when the brilliant rays of the summer sun came, melted from their nestling places, and, like the milk which flows from the breasts of motherhood to give life and sustenance to those tender ones who call it forth, flowed down to this arid land ready to give nourishment to the plant life if called upon to do so. It was this water these men meant to capture and apply to their lands and make them fruitful and thereby supply their families with the means of life and comfort.

But the trouble was, that the lands of these men were not located along the banks of the stream. They stood back some two miles from it, and this meant that a long ditch, several miles in length, must be built, with headgate higher up the stream, in order to get the water to them. Further, intervening ranches stood between their lands and the stream including those of Nichols and Bell. The consent of those intervening landowners must be secured in order that the ditch might be built across the land. This consent was secured and the ditch was built, as was a dam in the creek to back up the waters a little to make it flow into the headgate of the ditch. All these arrangements were effected without a writing of any kind to evidence the intentions of the men—a sort of "gentleman's agreement" only was entered into. The three men were to use the water share and share alike.

But from this agreement, or rather, the breaking of it on the part of one of the three men, arose an epoch-making lawsuit.[1] A discarding of one principle of law hoary with age and handed down to us from that old cradle of so many of our laws, the land of England. Epoch making it was indeed and echoes of it have only recently been heard rolling back to this fair land from the chambers of the highest court in our land.[2]

Fortunately for the people of Colorado, the then territory of Colorado had upon its supreme bench three lawyers and jurists of broad visions and fearless charac-

(1) Yunker v. Nichols, 1 Colo. Reports, 551.

(2) The State of Wyoming v. The State of Colorado et al., not yet printed in the reports.

ters—the Honorable Moses Hallett, Chief Justice of Colorado 1866-1876, United States District Judge for the District of Colorado, 1877-1906; the Honorable James B. Belford and the Honorable Ebenezer T. Wells. The first two have passed to their reward; the last is still with us, full of years, but with a mind undiminished in vigor.

As we have said, a dispute arose among the three ranchers who had constructed the ditch. Yunker accused Nichols of cutting the ditch and diverting the waters thereof with the intention of injuring him and depriving him of the use of his share of the waters and thereby greatly injuring his crops contrary to the verbal understanding previously entered into. There were, of course, some angry words and argument between the men about this, but Nichols persisted in his refusal to allow Yunker his share of the water. So Yunker sought out a lawyer and told him of his troubles with his neighbor Nichols. This lawyer no doubt, after dismissing his client, turned to his reports and text-books and found, under the titles of waters and water rights, easements and servitudes, little to comfort him or his client. Cases there were a plenty from England and from the lowlands of our coasts and from the moist valleys of our middle States which held that the right of one person to conduct water over the lands of another is an interest in real estate which must be conveyed by deed in compliance with the terms of the statute of frauds. But, the lawyer must have argued to himself, that won't do for my client, for the simple reason that there wasn't any written agreement between Yunker, Nichols and Bell concerning this ditch. This rule of law must be overthrown, repudiated, passed into the discard—in this dry and arid land—for surely the conditions of climate and soil here are not the same as in the lands where the rule found reason for its birth—we must endeavor to show the Court that the rule does not, cannot prevail in this country—that the necessities of the country by reason of its dry climate and arid soil should bring into existence a different rule of law—we must show the Court that, because of our dry climate and resulting arid soil the absolute dominion of his estate must be withheld from the landowner which would enable him to deny the right of others to enter upon it for the purpose of obtaining needed supplies of water and that this servitude must be granted whether it be in writing or given verbally. We must also endeavor to show the Court, incidentally at least, that the old law of riparian rights is not suited to our climate and soil.

So, in due course, the case of Yunker v. Nichols was called up for trial before a jury of twelve good men and true, in the District Court of Arapahoe County, Territory of Colorado, on the 19th day of January, 1872, the Honorable Ebenezer T. Wells, Judge. It was a one-sided lawsuit for the reason that the defendant Nichols introduced no evidence. The learned judge told the jury what the law of the case was by instructing them that, if the plaintiff's right to have water flow over the lands of the defendant was conferred by verbal agreement of the plaintiff, the defendant and a third person, which agreement was never reduced to writing, that the plaintiff could not recover; and so the jury found for the defendant.

Fortunately, in our country, litigants have a final throw in the game of chance of law suits. So the case of Yunker v. Nichols was appealed to the territorial supreme court. There presided in that court at the time of the appeal of this case, the three justices before mentioned, the Honorable Ebenezer T. Wells being the trial judge who heard the case and who was not long thereafter elevated to the supreme bench. The writer has, through the courtesy of the Honorable James Perchard, Clerk of the Colorado Supreme

Court, examined the record in the case. It presents a queer appearance, as records go in these days; no printed abstract of it is in existence, the contents all being written out by some fair penman. It is brief in extent, but contains a foundation on which the three justices were able to formulate a new rule of law for this great west.

The Chief Justice expressed as his opinion that the right of one person to construct an irrigating ditch over another's land without the latter's consent in writing, was given under the statute (R. S. 363) and that the Legislature (of the territory), in enacting this statute, recognized the law of necessity, a necessity arising from the arid soil and dry climate of the territory, and that therefore the grant of the right of way did not come within the statute of frauds and need not be in writing to sustain it.

Justice Belford expressed the opinion that, money and labor having been expended in the construction of the ditch, defendant was estopped to deny the license thus created, on grounds of estoppel and fraud, and further, the Legislature, keenly alive to the wants and necessities of the people of the territory, had enacted a law giving this right, and agriculture, being esesntial to the well being of the territory could only be developed by a system of irrigation, and, as a matter of absolute necessity, it had the right to pass the law in question.

Justice Wells reversed his ruling in the trial court and held that the right of every proprietor to have a right of way over the lands intervening between his possessions and the neighboring streams for the passage of water for irrigation, was sustained by the force of the necessity arising from local peculiarities of climate and existed regardless of the statute.

Thus it will be seen that, from the dispute which arose between two men over a little water from a little mountain stream running through what was then a dry and arid land and which now forms a part of the great city and county of Denver, a great rule of law arose, a rule followed since that time by many of the States of the arid west—a rule arising from the necessities of climate and a breaking away from the old ideas of the rights of riparian owners of land along the banks of streams, a rule of law which permits the cultivation and development of countless acres of arid land and which, without it, would necessarily lie idle and worthless.

While the doctrine of appropriation, the doctrine of "first in time, first in right", of "first come, first served", which is known in the law of irrigation as the "Colorado System", a doctrine not announced by the Supreme Court of Colorado until some ten years later, was not expressly mentioned in the Yunker case, yet this case opened the way for such doctrine, and that great rule of law has become forever established in that State and the law of riparian rights banished therefrom.

Under the influence of this case, Colorado has, along with other of the great States of the West, developed from a mere mining State into agreat agricultural State, teeming with people and wealth and destined to become still greater among the sisterhood of States.

MEANING OF THE WORD "CROWD"

Do you know how many words in the English language mean "crowd"?

To a foreigner, anxious to master the language, it was explained that a crowd of ships is termed a fleet, while a fleet of sheep is called a flock. Further, a flock of girls is called a bevy, a bevy of wolves is called a pack, and a pack of thieves is called a gang, and a gang of angels is called a host, and a host of porpoises is called a shoal, and a shoal of buffaloes is called a herd, and a herd of children is called a troop, and a troop of partridges is called a covey, and a covey of beauties is called a galaxy, and a galaxy of ruffians is called a horde, and a horde of rubbish is called a heap, and a heap of oxen is called a drove, and a drove of blackguards is called a mob, and a mob of whales is called a school, and a school of worshippers is called a congregation, and a congregation of engineers is called a corps, and a corps of robbers is called a band, and a band of bees is called a swarm, and a swarm of people is called a crowd.—Answers.

CONGESTED DOCKETS IN THE FEDERAL COURTS MENACE TO JUSTICE

By Harry M. Daugherty,
Attorney-General of the United States

Congestion of the Federal courts of the country, due to increase in our population and development of commercial and industrial America, has brought about a serious weakness in the machinery of federal justice. It is no uncommon thing for a district court docket to be from six months to two years in arrears. This naturally means loss of evidence, death of witnesses, defeat of justice and expense to taxpayers. Many cases can never be tried. Large and small business interests lose heavily by this delay. Steps are now being taken to remedy this condition of affairs in the selection of twenty-four additional trial judges and the Department of Justice hopes soon to complete its investigations into the qualifications of those being considered for these judgeships.

All through our history Federal judges have established enviable records of loyalty and devotion to duty and country that has sustained for all time the wisdom of our constitutional fathers. Never swayed by popular passions, but always true to the ideals of justice, law and order, these judges have carried on their work with the sole purpose of affording that protection to government and the American people to which they are so rightfully entitled. Individuals, labor and capital, and Congress itself, have felt the weight of their sound judgment and the influence of their opinions. Restraining even the government, and society generally in its restless, somewhat impulsive and sometimes impatient course, but always true to the Constitution they have sworn to support, these Federal judges are a living monument to a separate and distinct judiciary. Their decisions constitute a sound record of the social, economic and political history of our country. Often we do not agree with them, but no man dares challenge the fact that their judgments always have been in accord with the highest conceptions of constitutional government. They have been philosophers and historians, viewing popular opinions and prejudices of the moment with understanding and patience, but never swerving from their duty to interpret the law as it is written, and not as the temporary wishes of a people might dictate.

I have no patience with those who flaunt and scorn a judge because he has remained true to his oath and upheld the law contrary to selfish, social, economic or industrial interests. The growing disrespect of the Constitution and the law which the federal judiciary has so faithfully protected and interpreted, must sooner or later be brought to an abrupt halt if government is to survive the assaults of all the vicious elements which revolt against law and order.

Naturally we might expect a reaction from the idealism, unselfishness and restraints of war times. But the individualistic idea of freedom has led many to believe they themselves can violate the law, but others should remain straight-laced. A government can survive only as long as wise laws are passed and *all* laws are obeyed by *all* people.

Shortly after coming into office I found that the federal government was unable to secure the trial of many important civil and criminal cases, because dockets were so congested it was impossible to get the prompt action necessary for law enforcement. There had been no real increase in the federal judiciary for a quarter of a century, despite our strides in industry and commerce and our enormous increase in population and wealth. Federal police laws had been passed, immigrants of questionable moral standards and vicious leanings had crowded through our gates, state

governments had been apathetic, and business was resorting more and more to the federal courts. The war, it would seem, had temporarily suspended civil business, but now there was every indication of enormous increase. Criminal proceedings jammed court dockets all over the country, justice was being cheated and violators of federal laws were escaping punishment due to loss of evidence and other attendant conditions. Most serious of all, however, was the loss of prestige by the federal courts.

In a government by law it is necessary that the law be enforced, and that trials be prompt and speedy, otherwise forced delays promote disrespect of the law.

One hundred and forty-two thousand cases were pending and undisposed of on July 1, 1921, and conditions were critical the country over. Congress was asked for relief and suggestion was made at the same time that provision for an annual conference be made at which the Chief Justice of the Supreme Court of the United States, each of the Federal Circuit Judges, and the Attorney-General could consider ways and means of perfecting the administration of justice and relieving congestion. Recommendation was made also that a greater elasticity was necessary so that judges could be assigned to handle temporary congestion without the expense of a permanent judge.

After some delay, 24 new judges were authorized, but in the meantime congestion had increased to a point where there was an excess of 172,000 cases pending and undisposed of on July 1, this year. The new trial judges authorized by Congress just before adjournment are now being appointed, and I want to say here that no man, no matter what his ability may be, will ever be endorsed by the Attorney-General unless he is 100 per cent American in every shape and form. For the federal judiciary is the backbone of our government, and in these times of discontent and vicious radicalism, these judges must stand between the Constitution and the blind gropings of those who are swayed by violent and unscrupulous leaders.

If we are to be spared domination by organized minorities, then we must proceed in the selection of our judiciary with our eyes open and our vision unclouded by partisan views or principles. In the hands of the federal judiciary rest the treasures of freedom, the liberties of our people, and there cannot be too much care exercised in their selection. Temporary officers of the government who serve the people for only a brief period, can of necessity have but a limited share in the upward climb of our country, which it might be said, incidentally, has not yet reached its full development nor attained its maximum of world influence and power.

When the entire list of new judges is completed, and they get down to work, the congestion in all the courts will be speedily whittled down. But it is not alone in the trial of cases that law enforcement is handicapped. Congress has enacted numerous police laws as well as extended the scope of criminal jurisdiction in interstate commerce. New revenue laws have been passed which have afforded new temptations to the criminally inclined. Smuggling, bootlegging, robbery, forgery, conspiracies in restraint of trade, frauds and corruption exist everywhere and yet federal enforcement officers, with the exception of the Customs officers and United States marshals, are clothed with little more power than a private individual.

It is futile to pass laws without giving the federal government power to enforce them. Although the States possess police powers, the same powers are denied to the federal government. The federal government must have the power to enforce all federal laws, for responsibility without power is indefensible and can only result in disrespect for the law.

RELEASE—JOINT TORT-FEASOR

ABBOTT v. CITY OF SENATH

243 S. W. 641

Supreme Court of Missouri, July 27, 1922

Rev. St. 1919, § 4223, providing that release of one or more joint wrongdoers shall not impair claimant's right of action against the others, while evidently intended to abrogate the common-law rule that a release of one wrongdoer operates to discharge the others, does not change the principle that but one satisfaction lies for the same wrong.

W. G. Bray, of Senath, and McKay & Jones, of Kennett, for appellant.

James A. Bradley, of Kennett, for respondent.

RAGLAND, C. This suit was brought by C. H. Abbott against the city of Senath for personal injuries. It was instituted in the Circuit Court for Dunkin County, and afterwards taken to the Circuit Court for Pemiscot County on change of venue. During the pendency of the action Abbott died, and the cause was revived in the name of his administratrix.

Abbott was injured January 16, 1918, while walking along one of the streets of the city of Senath by the falling of an awning upon him. The awning, which was constructed of wood and supported by iron posts, was attached to the front of a building, and extended out over the sidewalk along the street. The building of which it was a part was owned by the Senter Commission Company of St. Louis, but was at the time occupied under a lease by the Petty Store Company. The evidence tended to show that the awning was caused to fall by snow and ice which had accumulated thereon between December 7, 1917, and January 16, 1918.

In addition to bruises and internal hurts, Abbott sustained a fracture of the upper third of the femur of one leg. He partially recovered from his injuries; the fracture healed; but there was a shortening of the leg, which caused him to walk with a limp. A little more than a year after he was injured he was stricken with pneumonia and died. The physician who treated him for the injury and attended him in his last illness gave it as his opinion that the injury did not in any way contribute to his death.

On March 11, 1918, following his injury in January, Abbott received from the Senter Commission Company the sum of $500, and gave his receipt therefor. The receipt was in words and figures as follows:

"$500.00. Senath, Missouri, March 11, 1918.

"Received of Senter Commission Company, St. Louis, Mo., five hundred dollars in full of all demands, from injury received by the falling of awning in front of their brick building, occupied by Petty Store Company, located in Senath, Missouri, on or about the 16th day of January 1918. C. H. ABBOTT."

On March 21, 1918, Abbott also received $250 from the Petty Store Company, and executed to them an acquittance, which recited among other things that such sum was paid and received in settlement and compromise of Abbott's claim against that company for his injuries. After that—the precise date is not shown by the record here—he instituted this suit against the city of Senath to recover full compensation for the injuries sustained by reason of the awning having fallen upon him.

The petition counted on negligence on the part of defendant city in permitting the accumulated snow and ice to remain on the awning after it knew, or by the exercise of ordinary care could have known, that the awning by reason of such accumulation had become dangerous to pedestrians passing along the street and sidewalk under it.

As an affirmative defense the answer alleged that the injury for which plaintiff sued was the result of the joint wrong of the defendant city, the Senter Commission Company, and the Petty Store Company, and that the Senter Commission Company had paid C. H. Abbott, the person injured, and the said Abbott had received and accepted the sum of $500 in full satisfaction and discharge of the cause of action set forth in the petition.

For defendant the Court instructed the jury:

"If you find and believe from the evidence that the injured party, C. H. Abbott, in his lifetime, received from the Senter Commission Company the sum of $500 for the injury in question and complained of in plaintiff's petition, and that he accepted the said sum of $500 in full of all demands for the injury received by him on account of the falling of the awning as complained of in plaintiff's petition, * * * your verdict will be for the defendant. * * *"

The verdict and judgment were for defendant. Plaintiff appeals.

The only question involved in the case is whether the receipt by Abbott of $500 from the Senter Commission Company and the acknowledgment he made in connection therewith operated as a discharge of his cause of action against the city of Senath. Appellant contends that they did not for these reasons: First, the Senter Commission Company was not in fact liable for Abbott's injury, hence was

not a joint tort-feasor; and, second, Abbott's settling with the company, even if it was a joint tort-feasor, did not preclude him from suing the defendant city for the balance of the compensation to which he was entitled.

(1) 1. It is a just and well-established doctrine that there shall be but one satisfaction accorded for the same wrong. If one be injured by a tortious act, he is entitled to compensation for the injuries suffered, and, if several persons are guilty in common of the tort, the injured one has his right of action for damages against each and all of the joint tort-feasors, and may at his election sue them individually or together. But if he receive full satisfaction from one of them, his right of action against the other, is thereby extinguished. Dulaney v. Buffum, 173 Mo. 1, 73 S. W. 125; Butler v. Ashworth, 110 Cal. 614, 618, 43 Pac. 4, 386.

"In such a case it is not necessary that it should appear that the party making the settlement was in fact liable. It will be deemed sufficient if there is an appearance of liability; that is, something in the nature of a claim on the one hand, and a possible liability under the rules of law on the other." Cleveland, etc., R. R. Co v. Hilligoss, 171 Ind. 417, 425, 86 N. E. 485, 488 (131 Am. St. Rep. 258).

If the injured person "accepted satisfaction in full for the injury done him, from whatever source it may come, he is so far affected in equity and good conscience that the law will not permit him to recover again for the same damages". Lovejoy v. Murray, 3 Wall. 1, 17, 18 L. Ed. 129.

Plaintiff's intestate having made a claim against the Senter Commission Company for injuries received from the falling awning, and having received payment in satisfaction of such claim, she is estopped to now assert that there was in fact no liability on the part of the company, and that it was not a joint tort-feasor. Hubbard v. Railroad, 173 Mo. 249, 255, 256, 72 S. W. 1073.

(2) 2. Appellant bases her second contention on Section 4223, R. S. 1919, which provides:

"It shall be lawful for all persons having a claim or cause of action against two or more joint tort-feasors or wrongdoers to compound, settle with, and discharge any and every one or more of said joint tort-feasors or wrongdoers for such sum as such person or persons may see fit, and to release him or them from all further liability to such person or persons for such tort or wrong, without impairing the right of such person or persons to demand and collect the balance of said claim or cause of action from the other joint tort-feasors or wrongdoers against whom such person or persons has such claim or cause of action, and not so released."

This statute was evidently intended to abrogate the rule at common law that a release of one joint tort-feasor operates as a discharge of the other joint tort-feasor. But it was not designed to affect, and does not affect, the principle that there can be but one satisfaction for the same wrong. The question then is: Did Abbott accept from the Senter Commission Company $500 as full satisfaction for his injury? And the answer to that question is to be sought in the written acknowledgment he made to the company at the time.

(3) The facts and circumstances leading up to and attending the consummation of the transaction between Abbott and the Senter Commission Company were not disclosed by the evidence. The execution of the receipt was proved, and it was then read in evidence. Nothing further was shown with respect to it. In interpreting it, therefore, no resort can be had to extrinsic facts. The document recites that—

"Abbott received the money 'in full of all demands from (for) injury by the falling of awning in front of their (the company's) brick building * * * on or about the 16th day of January, 1918.'"

This language excludes the idea that the money was paid as a gift or gratuity. Nor does it contain any suggestion that the money was accepted by Abbott merely as part compensation for his injury, in consideration of which he released the company from further liability. On the contrary, it plainly states that the money was received by him *in full payment of all demands for his injury*. Appellant insists that it should be read "in full of all demands *against the Senter Commission Company*". But even so, the company was liable, if at all, for the entire damage, and there is nothing in the language to indicate, even by implication, that Abbott was claiming or demanding anything less than the full amount for which it was liable to him. But aside from any such refinement, the recital in general terms that the money was received in full of all demands for his injury, without any limitations or reservations whatever, clearly indicates that Abbott considered that he had effected a complete settlement, and that he was thereby acknowledging, and intending to acknowledge, satisfaction in full of his cause of action. The fact that Abbott subsequently secured $250 from the Petty Store Company and still later sued the city, on account of his injury, is without significance. As an afterthought he may have concluded that he had settled too cheaply, or that the Petty Store Company and the city would be willing to pay additional sums to buy their peace.

(4) 3. The written acknowledgment given by Abbott to the Senter Commission Company was not a mere receipt; it embodied what was in fact a release (Coon v. Knap, 8 N. Y. 402, 59 Am. Dec. 502); its interpretation, like that of any other written instrument, was for the Court, and not the jury. Properly construed, it showed that plaintiff's cause of action had been discharged before the institution of the suit. Defendant, therefore, was entitled to a directed verdict. However, as the judgment was for the right party, it should be affirmed. It is so ordered.

BROWN, C., not sitting.

SMALL, C., absent.

PER CURIAM. The foregoing opinion by RAGLAND, C., is hereby adopted as the opinion of the court. GRAVES AND ELDER, JJ., concur.

JAMES T. BLAIR, J., concurs in result.

WOODSON, P. J., dissents.

NOTE—*Statute As to Release of Joint Wrongdoer Does Not Abrogate Rule That But One Satisfaction Lies for Same Wrong.*—This very interesting case is published in full as reported. It construes the provisions of a statute enacted comparatively recently, and by its construction limited the effect of the statute much within the scope it was thought by many to have.

BOOK REVIEWS

CASES ON INTERNATIONAL LAW

This book, by Prof. J. B. Scott, of Georgetown University, is apparently a well-constructed one. Having just been published by the West Publishing Co. as one of the American Casebook Series, it contains cases relating to the subject resultant from the World War.

An excellent statement of the tangibility and binding character of international law and its existence as a part of the common law of England and the United States is given in the preface, followed by a list of authorities on the subject for collateral examination.

The case content, after bringing out the nature and extent of international law, by briefs of several English and American cases, including that of "The Antelope," is grouped under three parts, viz., rights and duties of nations in time of peace, compulsive measures of redress in time of peace and rights and duties of nations in time of war.

Under the first of these divisions are included cases pointing out the nature and kinds of states, their recognition and responsibility, setting out, in this connection, the essentials of the cases of City of New Orleans v. Abbagrata, with an instructive footnote; nationality, with its subdivisions of allegiance, naturalization and expatriation; territory and jurisdiction of states; treaties and excerpts from the conventions of The Hague bearing on the settlement of international disputes. Under the second part appear cases delineating compulsive measures for obtaining redress available to a nation in time of peace, these being non-intercourse, embargo, retaliation, display of force, pacific blockade and reprisal. Part III deals, in a complete manner, with the rights and duties of nations in time of war, including status of enemy property, alien enemies before courts of justice and the several phases involving neutrals and their property.

In these appendices following are set forth the Covenant of the League of Nations and the Statute for the Permanent Court of International Justice provided for therein; the various declarations and conventions pertaining to the subject of warfare and the three British Orders in Council for restriction of enemy commerce during the World War.

CASES ON BILLS AND NOTES

The second edition of the work on this subject by Profs. Smith of Wisconsin, and Moore of Columbia, another volume in the American Casebook Series, has been examined. The arrangement of the subject matter is good, embracing, in the first division, after introductory cases on the subject of negotiability, cases indicating the form and requisites of negotiable instruments, acceptance, delivery and consideration. The second division pertains to the transfer of these instruments and to the holder in due course. The liability of the parties to such instruments, including presentment, protest, notice and liability of transferrer, forms the subject matter of Part III. The last part deals with the subject of discharge, by payment, renunciation, cancellation or alteration.

The uniform Negotiable Instruments Law, an appendix to the volume, should assist the reader in expressing concretely the points of law deduced from the cases.

WEEKLY DIGEST.

Weekly Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Aliens**—Right to Real Property.—Both dower and curtesy acrue at common law by descent, and not by purchase, as regards right of alien to take real property.—Breuer v. Beery, Iowa, 189 N. W. 717.

2. **Bankruptcy**—Acts of Bankruptcy.—Where the record in a receivership suit against a corporation shows that receivers were not appointed because of insolvency, as defined in Bankruptcy Act, § 1, cl. 15 (Comp. St. § 9585, cl. 15), it is conclusive that such appointment did not constitute an act of bankruptcy, under Section 3a, cl. 4, as amended in 1903 (Comp. St. § 9587a, cl. 4).—E. B. Badger Co. v. Arnold, U. S. C. C. A., 282 Fed. 115.

3.——Attachments.—Under Bankruptcy Act, § 67f (Comp. St. § 9651), providing that an attachment obtained within four months of bankruptcy is null and void, unless the Court shall on due notice order that the right under such attachment shall be preserved for the benefit of the estate, a trustee in bankruptcy may be substituted to the rights of an attaching creditor of the bankrupt.—Bell v. Frederick, U. S. C. C. A., 282 Fed. 232.

4.——Conditional Sales.—Where the bankrupt within the four months preceding the filing of the petition surrendered to the seller goods which had been purchased under a conditional sale contract reserving title in seller, the trustee was not entitled to the property on the theory that the relinquishment of the property to the seller constituted a preference, voidable at the instance of the trustee.—In re Johnson, U. S. D. C., 282 Fed. 273.

5.——Court Record.—Where the record contains no opinion by the lower court on granting an order it will be presumed that the reasons assigned by the party relieved were the reasons, and the only reasons, that actuated the court.—In re A. & W. Nesbitt, U. S. C. C. A., 282 Fed. 265.

6.——Exemptions.—Under the Bankruptcy Act (Comp. St. §§ 9585-9656) and Rev. Gen. St. Fla. 1920, § 4977, the "cash surrender value" of life insurance policies, being no more nor less than surplus premium on life insurance, or surplus earnings on unnecessarily large premium paid for the actual insurance, is not proceeds thereof, such as would entitle a bankrupt to exemption thereof.—In re Morgan, U. S. D. C., 282 Fed, 650.

7.——Exemptions.—Claimant purchased, through bankrupts, as brokers, and paid for, 100 shares of stock, which were bought by bankrupts' New York correspondent for their account, but, without claimant's knowledge, were held with other stocks for advances made to bankrupts. After bankruptcy sale of the other stocks paid the indebtedness and the only stock of the kind which came into the hands of the trustee was the 100 shares so bought, for which there was no other claimant. Bankrupts' books showed the same number paid for by claimant. Held, that such shares were sufficiently identified as the property of claimant, and that he was entitled to their delivery, having made demand for them before the bankruptcy.—In re Mason, U. S. C. C. A., 282 Fed. 202.

8.——Possession of Accounts.—Under an agreement to assign accounts due and to become due as collateral security for loans, a list of accounts sent the creditor, with a statement that it was a list of the accounts assigned to him in accordance with the agreement, was equivalent to the taking of possession in the case of a chattel, or to the recording of a mortgage, and gave the creditor title to and possession of the accounts as against a trustee in bankruptcy subsequently appointed.—In re Hub Carpet Co., U. S. C. C. A., 282 Fed. 12.

9.——Stockholders' Claim.—A stockholder of bankrupt corporation, who was induced to purchase his stock by fraud and misrepresentation, but who had held the same for 1½ years, during which time most of the existing indebtedness was created, held entitled to rescind his purchase, but his claim against the estate held subordinate to those of general creditors.—In re Morris Bros., U. S. D. C., 282 Fed. 670.

10.——Transfer of Property.—To maintain a suit to recover a preference, under Bankruptcy Act, § 60 (Compt. St. § 9644), it is necessary to show, and the burden is on the plaintiff to prove, that the bankrupts, while insolvent, within four months of the filing of the petition, made a transfer of property, that the transferee thereby obtained a greater percentage of his debt than other creditors of the same class, and that he then had reasonable cause to believe that the enforcement of the transfer would effect a preference.—Abdo v. Townsend, U. S. C. C. A., 282 Fed. 476.

11. **Banks and Banking**—Certified Checks.—A bank is liable on its certified check to one who takes it on the faith of its certification, though the drawer has nothing to his credit in the bank.—Border Nat. Bank v. American Nat. Bank, U. S. C. C. A., 282 Fed. 73.

12. **Bills and Notes**—Collateral.—Notes given by a corporation to a bank on bank's demand for additional collateral for notes of like amounts previously given the bank by third persons for the corporation's accommodation, whereby forbearance to press collection of the accommodation notes was obtained, are neither ultra vires nor without consideration.—In re Boston Confectionery Co., U. S. D. C., 282 Fed. 726.

13. **Carriers of Goods**—Degree of Care.—Though bill of lading gives carrier option of keeping goods in car as warehouseman, if not removed in certain time after notice of arrival at destination, it must not negligently keep them in a leaky car.—Hines v. First Guaranty State Bank of Aubrey, Tex., 243 S. W. 972.

14. **Carriers of Passengers**—Duty of Carrier.—Proof that plaintiff was a passenger and was injured when the car in which he was riding was derailed, with proof of the damages sustained, raised a presumption of responsibility, and it then became the duty of the carrier to establish, by the preponderance of the evidence, that the accident occurred, notwithstanding its exercise of the highest degree of practicable care.—Shaughnessy v. Director General of Railroads, Pa., 118 Atl. 390.

15. **Chattel Mortgages**—Notice.—A buyer of a mortgaged piano, who was told by the seller that there was a mortgage on the piano and given the name of the mortgagee, was charged with actual knowledge of the existence of the mortgage, though also told falsely by the seller that the mortgage had been discharged by payment, as he failed to investigate at his peril.—Cable Piano Co. v. Lewis, Ky., 243 S. W. 924.

16. **Constitutional Law**—Cause.—To justify the State or a municipality to interpose its authority in behalf of the public, it must appear, not only that the interests of the public generally, as distinguished from those of a particular class, require such interference, but that the means adopted are reasonably necessary for the accomplishment for the purpose, and not unduly oppressive on individuals.—Robinson v. Wood, N. Y., 196 N. Y. S. 209.

17.——Illegal Search.—The introduction on a criminal trial of evidence obtained through an illegal search of defendant's house and premises violated no right secured to her under Const. U. S. Amend. 4, prohibiting unreasonable searches and seizures, Amendment 5, prohibiting compulsory self-incrimination, or Amendment 14, relative to due process of law, and the abridging of privileges and immunities of United Statse citizens. (Response of Supreme Court to certified questions.)—Banks v. State, Ala., 93 So. 293.

18.——Limited Fine.—In view of Const. Art. 7, § 26; Crawford & Moses' Dig. § 1485 limiting amount of fine cannot be construed as a limitation upon the power of the courts to punish for contempt in disobedience of their process.—Spight v. State, Ark., 243 S. W. 860.

19.——Money Lenders Act.—Money Lenders Act of March 9, 1901 (Laws 1901, p. 2685), is not unconstitutional as violating Const. 1875, Art. 1, § 23, forbidding impairment of obligation of contracts granting of special privileges and immunities.—Alabama Brokerage Co. v. Boston, Ala., 93 So. 289.

20.——Treason.—Laws 1919, p. 420, making it unlawful to advocate the reformation or overthrow by violence or unlawful means of the existing form of government, etc., contains no uncertainties or ambiguities, denying to defendants their right under Const. Art. 2, § 9, to be informed of the nature and cause of the accusation against them, or depriving them of liberty and property without due process in violation of Article 2, § 2, and Const. U. S. Amend. 14.—People v. Lloyd, Ill., 136 N. E. 505.

21. **Contracts—Arbitration.**—A provision in a contract for the submission of disputes to arbitration will not bar an action for an injunction to prevent a breach of the contract.—Harry Hastings Attractions v. Howard, N. Y., 196 N. Y. S. 228.

23. **Corporations**—Individual Liability.—The mere fact that a person is designated upon corporate letter heads as a department manager does not make him individually liable, so as to relieve the corporation for goods purchased for his department.—Black Diamond Coal Co. v. Anderson Coal Co., Iowa, 189 N. W. 774.

23.——Stock Issue.—**Irregularity in the original** organization of a corporation is not available to stockholders who consent to a merger of such corporation in a new corporation, and who accept the substitution of new stock for the old.—Lohr v. Faber, Iowa, 189 N. W. 806.

24.——Trustee Authority.—A contract between corporate directors and the general manager, increasing his salary and providing for payment of percentages of net profits, being a matter of business within the discretion of the board, there was no obligation on the directors or officers to consult or advise with the majority stockholders.—Ransome Concrete Machinery Co. v. Moody, U. S. C. C. A., 282 Fed. 29.

25.—Unreasonable Delay.—In action to rescind a contract for the sale of stock, begun six years after plaintiff gave an option and five years after he transferred the stock, where the death of one of defendants materially changed the condition in so far as other defendants were concerned, delay in bringing the action held unreasonable.—Kinter v. Commonwealth Trust Co., Pa., 118 Atl. 392.

26.—**Dower—Release.**—While a wife may enter into an ante-nuptial agreement covering the release of dower, she may not release her inchoate right of dower to her husband directly.—Stokes v. Stokes, N. Y., 196 N. Y. S. 184.

27. **Executors and Administrators.**—Appointment.—Under Administration of Estates Act, § 18, Specifying the order of classes of persons who may administer on intestate estates or nominate the administrator and providing that preference and the right to nominate must be exercised within 60 days, at the expiration of which administration shall be granted to the public administrator, where children of a decedent did not apply for letters of administration until five months after the death, a public administrator cannot prevent the granting of letters to one of the children of decedent, since under Sections 18, 19, 46 and 48, relating to administration, relatives of a decedent are preferred to the public administrator.—Dupee v. Follett, Ill., 136 N. E. 543.

28.——Litigation.—An administratrix is not entitled to allowance for attorney's fees merely because she has expended money for legal services acting in good faith, as an administrator deals with a trust fund, and cannot use proceeds of estate in litigation to detriment of creditors, unless the litigation is reasonably necessary to protect the best interests of the estate.—In re Chesmore's Estate, Iowa, 189 N. W. 770.

29. **Fixtures**—Machinery.—Where, after judicial sale of a mortgaged plant for manufacturing printing presses, a business proved unprofitable for the location, the purchaser installed therein machines for manufacture of war munitions, and later machines for the manufacture of silk machinery, such added machines did not become subject to the mortgage lien, continued unaffected by the judicial sale, by Act Pa. May 8, 1901, § 1 (P. L. 141; Pa. St. 1920, § 8853), they being installed, so that they could be removed without damage to the factory, no intent that they should become part of the printing machinery outfit appearing or being inferable, and the machinery for printing presses remaining intact and in good condition.—M'Connell v. Chelton Trust Co., U. S. C. C. A., 282 Fed. 105.

30.——Sale of Personal Property.—St. Mass. 1912, c. 271, providing that no conditional sale of heating apparatus, plumbing goods ranges or other personal property which is attached to real estate shall be valid as against purchasers, etc., unless recorded within 10 days after making, does not apply to an air compressor, as it is not of the same kind and general description as the articles specifically mentioned.—Chicago Pneumatic Tool Co. v. Arnold, U. S. C. C. A., 282 Fed. 43.

31. **Frauds, Statute of**—Executed Wills.—The statutes of frauds cannot be invoked by the State in proceeding to collect inheritance tax, to avoid a contract to hold property in trust and will it to beneficiaries after it had been carried into execution by will.—People v. Tombaugh, Ill., 136 N. E. 453.

32. **Fraudulent Conveyances**—Bulk Sales Law.—Where a bank loaned money to an owner of a stock of goods to pay off a chattel mortgage on goods, while a sale of the goods was pending, but before the sale was finally consummated, and the sale was void under the Bulk Sales Law, the bank became a creditor of the owner, and was entitled to share in the proceeds of the stock.—Carnall v. Kramer, Iowa, 189 N. W. 755.

33.——Vendee Act.—Where a sale was a mere pretense, without consideration, it was immaterial that the pretended buyer did not share in the seller's design to defraud her creditors.—Cushman v. Noe, Mass., 136 N. E. 567.

34. **Grand Jury**—Contempt of Court.—Evasion of service of subpoena, issued by grand jury as an arm of the court, is a contempt of court within Const. Art. 7, § 26.—Spight v. State, Ark., 243 S. W. 860.

35. **Highways**—Failure to Stop and Render Assistance.—In prosecution for failure to stop and render assistance after a collision, indictment, charging that the collision occurred "upon a public highway, to-wit, Tenth street, in the city of Dallas, county and State aforesaid", and that the motor vehicle driven by defendant struck and collided with and injured a named person, that defendant refused to stop and render necessary assistance to such person, that the injuries were of such a nature that it was necessary to secure a physician or to convey injured person to a place for treatment of injuries, and that defendant failed and refused to secure a physician or to convey the injured person to a place where her injuries could be treated, held sufficiently specific.—Stalling v. State, Tex., 243 S. W. 990.

36. **Infants**—Agency.—Where a licensed operator of pool tables delegated his authority in the operation of his pool room to an agent, he was liable for the latter's act in permitting a minor to play pool in violation of Ky. St. § 1972, and the agent's knowledge that the minor was such was imputable to him.—Dezarn v. Commonwealth, Ky., 243 S. W. 921.

37. **Injunction**—Lease.—A tenant will be enjoined from violating the covenants of a lease permitting the landlord to show premises to prospective purchasers or tenants, and to place "To Let" and "For Sale" signs thereon after certain date, not-

withstanding the expressed intention of the tenant to take advantage of any rent laws, in order to retain possession of the premises at a reasonable rental after expiration of the term.—Spencer & Co. v. Biggs, N. Y., 196 N. Y. S. 183.

38.——Special Service.—Where defendant was engaged as a comedian on the burlesque stage, and took the leading role in the production in which he acted, and several newspapers praised his acting very highly, such services were unique, special, and extraordinary, and defendant may be enjoined from performing for any person other than plaintiff during the term of the contract.—Harry Hastings Attractions v. Howard, N. Y., 196 N. Y. S. 228.

39. **Insurance**—Covenants.—Where a health insurance policy covered disability from disease contracted during the term of insurance, preventing insured from prosecuting any and every kind of business and necessarily confining him to the house, the clause "and be necessarily confined to the house" was not intended to describe a course of conduct for insured, but referred to a condition of illness and disability which made confinement within doors a necessity, and insured was not precluded from recovery because, on the advice of physicians, he unsuccessfully sought relief at divers times in different climates.—Aetna Life Ins. Co. v. Willetts, U. S. C. C. A., 282 Fed. 26.

40.——Coverage.—Where, although aplication and certificate of membership in a fraternal benefit association in terms forfeited membership for engaging in prohibited occupations, the edicts of the association, which controlled, recognized a continuing membership on change to prohibited occupation, subject only to the proviso that the insurance should not cover death or injury from a pro-prohibited occupation, acceptance of dues after change to prohibited ocupation did not estop the association to claim that death in a prohibited occupation was not covered; the question being one, not of forfeiture, but of coverage—Metlon v. Royal Highlanders, Iowa, 189 N. W. 787.

41. **Intoxicating Liquors**—Conflict of Law.—The Wartime Prohibition Act of Congress of November 21, 1916 (U. S. Comp. St. Ann. Supp. 1919, §§ 3115 11-12f-3115 11-12h, did not supersede Rev. St. 1919, § 6568, prohibiting the sale of liquor in a county in which the local option law has been adopted; the State statute not being inconsistent with the federal act.—State v. George, Mo., 243 S. W. 948.

42.——Definition.—Under Const. U. S. Amend. 18, § 2, giving Congress and the States concurrent power to enforce that article by appropriate legislation, Congress cannot control the legislation of the States in the exercise of such concurrent power by defining "intoxicating liquor", especially as the definition contained in the Volstead Act only purports to relate to that act.—State v. Gauthier, Me., 118 Atl. 380.

43.——Evidence.—In prosecution for distilling and manufacturing intoxicating liquor, in which there was undisputed evidence that the defendant was arrested about two miles from his home, where he was alleged to have manufactured the liquor, as he was returning from another place some miles distant, where he had been for a couple of days, testimony that he was drinking at the time of his arrest, and that his breath smelled like corn liquor, held inadmissible.—Gowen v. State, Ala., 93 So. 281.

44.——Intention.—Under Burns' Ann. St. 1914, § 8345, the possession of intoxicating liquor in a soft drink place by one who ran such place was prima facie evidence of her intent to sell or otherwise unlawfully dispose of it.—Peto v. State, Ind., 136 N. E. 556.

45.——Parts of Still.—Under Acts 1919, p. 1086, unexplained possession of any part of a still is prima facia evidence that the defendant had a still in his possession to be used for the manufacture of prohibited liquors or beverages, even though the prohibited liquors could not be made with the parts so found, provided that they were commonly or generally used or suitable to be used in the manufacture of such liquors.—Lindsey v. State, Ala., 93 So. 331.

46.——Search warrant.—Under Const. § 10, forbidding issuing search warrant "without probable cause supported by oath or affirmation", an affidavit which as to probable cause merely stated "that they have reasonable grounds for believing, and do believe", etc. "They state that the reasons for so believing are based upon the following facts: 'We have information that about 10 gallons of moonshine whisky is hid at' " accused's premises —was insufficient, as it stated no fact from which the magistrate could determine the existence of probable cause.—Price v. Commonwealth, Ky., 243 S. W. 917.

47.——Transportation.—Where one owning and controlling an automobile driven by his son, in which he and others were riding, after taking a drink from a jar of whisky, placed it in the bottom of the car, where it was then carried, he was guilty of transporting it, though he did not own it, or put it in the car, or know how it came to be in the car.—Green v. Commonwealth, Ky., 243 S. W. 917.

48.——Transportation—In prosecution for transportation of intoxicating liquor, it was not necessary for the indictment to allege that the transportation of the liquor was for the "purpose of sale"—Cecil v. State, Tex., 243 S. W. 988.

49. **Judgmnet**—Matters Collaterally.—A judgment is not res judicata as to matters which are considered only collaterally, or incidentally, nor is it conclusive of matter inferred by argument from the judgment.—Barrett v. Miner, N. Y., 196 N. Y. S. 175.

50. **Master and Servant**—Course of Employment. —An ordinance limiting the speed of trains, except where the track does not cross any street at grade, is not only for the protection of the public crossing the tracks at the intersection, but also for railroad employees; the word "where" meaning "at the place", and, though one claiming the benefit of the ordinance need not be at any particular place, he must be at a street crossing.—Girl v. United States Railroad Administration, Iowa, 189 N. W. 834.

51.——Independent Act.—In an action for damages to plaintiff's automobile, struck by defendant's truck, uncontradicted evidence that he was employed at a service station to supply defendant's customers with gas and oil, and was not employed to drive, and that he took the truck, without authority from his superiors, for the purpose of driving to obtain his supper, held to entitle the defendant to an affirmative charge, on the ground that the driver was not acting within the line of his employment.—Standard Oil Co. v. Douglass, Ala., 93 So. 286.

52.——Measure of Damages.—Under St. 1911, c. 751, pt. 2, § 10, as amended by St. 1914, c. 708, § 5 (now G. L. c. 152, § 35), where injured employee's impairment of physical strength or energy directly attributable to injury reduced wages below average weekly wages before the injury, he is entitled to compensation, though for a period he suffered no loss in wages, probably due to abnormal industrial conditions.—Johnson's Case, Mass., 136 N. E. 563.

53.——Term **of** Statute.—The term "lawful requirement", as used in Section 35, Art. II, of the Constitution, and in Section 1465—76, General Code, comprehends such lawful, specific and definite requirements or standard of conduct as would advise an employer of his legal obligations.—Patten v. Aluminum Castings Co., Ohio, 136 N. E. 426.

54. **Money Received**—Stock Purchase.—Where plaintiff agreed to purchase stock in the P. Company and paid therefor, and defendant thereafter took over the P. Company's assets and agreed to issue its stock to the subscribers, and for six or seven years never questioned or disputed plaintiff's rights as a stockholder, and, on her request for a stock certificate, offered to issue a duplicate certificate, the money paid the P. Company cannot be recovered from defendant as money had and received.—Davis v. Lime Cola Bottling Works, Ala., 93 So. 328.

55. **Municipal Corporations**—Garbage.—By-products of a kitchen or restaurant, used or cared for in a harmless, inoffensive, sanitary manner, are not necessarily "garbage" within the ordinary meaning of the term. The product called "hog food", as shown in evidence here, was not "garbage" as ordinarily defined.—Bishop v. City of Tulsa, Okla., 209 Pac. 228.

56.——Joinder of Defendants.—In a suit brought under direction of a city charter in the name of a city against landowners chargeable for public improvements, to determine the validity of the ordinance establishing a benefit district, and whether the landowners should be charged with a lien for the work, service being had by publication as provided by the charter, it was not essential for the petition to name the property owners where they amounted to about 17,000.—Schmelzer v. Kansas City, Mo., 243 S. W. 946.

57.——Police Power.—In the exercise of its police power a city may regulate, not only nuisances which have been declared such, but may protect the inhabitants from conditions which may reasonably be anticipated.—Ex parte Mathews, Calif., 209 Pac. 220.

58.——Valid Ordinance.—Where the mayor or presiding officer of the city council or board of trustees is simply required to sign ordinances, and it is apparent that his act is ministerial in its nature, and required merely to furnish evidence of the authenticity of the enactment, and the idea of approval is not involved, the requirement is directory only, and omission to comply therewith will not render an ordinance invalid.—Fields v. Town of Whitesburg, Ky., 243 S. W. 930.

59.——War Contract.—Laws 1921, c. 711, providing that, as to contracts for the construction of public works made prior to April 6, 1917, other than a war contract, which have been proceeded with or completed during the period of the war at an increased cost due to the existence of the war, any damage occasioned by such increased cost in the performance of the work shall be a valid and legal claim against, and an obligation of the State county, municipality, or political division of the State with or for which said contract was made. held unconstitutional, as violating Const. Art. 3, § 28.—McGovern v. City of New York, N. Y., 196 N. Y. S. 162.

60. **Negligence**—Taxi Passenger.—The negligence of the driver of a taxicab is not imputable to a passenger exercising no control over the driver aside from giving him the destination to which she desired to be driven.—Morris v. La Bahn, Iowa, 189 N. W. 797.

61. **Principal and Agent**—Private Benefit.—An attorney who filled up a check drawn on a partnership's bank account in its name, by his client as its agent, and received the money after the check was cashed at the bank, to be held as security for his client's bondsmen and returned on release of the bail, was not entitled to retain a portion thereof for services rendered, on the ground that, as money has no earmarks, he had a right to assume that it was the agent's money, notice appearing on the face of the check and other checks similarly drawn for services rendered that the agent was drawing money, which his attorney knew was to be used for his own purposes and private benefit, out of his principal's funds.—Rothstein v. Grossberg, Ill., 136 N. E. 481.

62.——Privy of Contract.—Defendant refrigerator company was not liable to plaintiff shipper as railroad company's agent, unless it undertook to perform certain of the things required of the carrier under the latter's contract with plaintiff, but if the refrigerator company was in fact the railroad company's agent in the performance of acts upon which negligence is predicated by plaintiff, such as icing peach shipments, such acts, if amounting to misfeasance, create a liability.—E. N. Emery & Co. v. American Refrigerator Transit Co., Iowa, 189 N. W. 824.

63.——Revocation.—Where defendant, in authorizing a real estate agent to sell land, told him, if he made a sale, to go to an abstracter, who would prepare the papers and receive the down payment, but the abstracter knew, before he received the down payment and gave a receipt therefor, that defendant repudiated the sale his authority was revoked or reduced accordingly.—Buechler v. Olson, Iowa, 189 N. W. 741.

64. **Railroads**—Contributory Negligence.—In action for death of motor truck driver at railroad crossing in Louisiana, whether deceased was guilty of contributory negligence, held for the jury, it appearing that the train which struck him was going 50 miles an hour and was behind time and that deceased stopped his truck before crossing, but that it took some time to start it and cross the track after stopping.—Jones v. Louisiana Western Ry. Co., Tex., 243 S. W. 977.

65.——Crossing Gates.—Where one killed in a railroad crossing accident was not a resident of the place where the accident occurred, it is a reasonable inference that he did not know the hours during which crossing gates were operated.—Wyseur v. Davis, Calif., 209 Pac. 213.

66.——Duty of Employees.—Instructions that it was the duty of railroad employees operating an electric car along highway to use ordinary care to avoid striking animals that might by the use of ordinary care be discovered on the track or in such dangerous proximity thereto that it might reasonably have been anticipated might come thereon, and that it was the motorman's duty to use the usual means to frighten the animals away, and if they were discovered by him or ought to have been discovered by the use of ordinary care in time to check the speed so as to avoid injury, it was his duty to check the speed and avoid injury if he could do so by the use of reasonable care, held sufficiently favorable to the railroad.—Smith v. Utah-Idaho Cent. R. Co., Utah, 209 Pac. 235.

67. **Sales**—Acceptance.—Where a separate order for gloves, to be shipped from G., was given with order for hose to be shipped from W., and seller shipped both orders, packing some hose with the gloves shipped from G., buyer, on accepting the principal shipment of hose shipped from W., must also accept hose shipped from G.—Loucks Bros. v. Chaab, N. Y., 196 N. Y. S. 233.

68.——Price.—A contract for the purchase of pulpwood at "$17.50 and rise which others pay, dollars per cord" held an undertaking to pay $17.50 per cord or any excess of that which the market price might reach in that vicinity before delivery.—Wass v. Canadian Realty Co., Me., 118 Atl. 375.

69. **Specific Performance**—Sale of Real Property.—Where the owner of property for a consideration gives to another an agreement in writing that within a specified time he will sell his property, describing it, at a price named, and within the time named the other party accepts the offer, and notifies the maker thereof, and demands performance, such agreement becomes mutual and enforceable.—Leonard v. Schnaier, N. Y., 196 N. Y. S., 173

70. **Street Railroads**—Trespasser.—A street car conductor, who while in uniform and while his own car was standing on a turnout, stood on the main track, signaling another car to stop, as he had authority as conductor to do, was not using the street as a traveler, and where, because of his wrongful exercise of his authority he did not have the rights of an employee, he was only a trespasser.—Manning v. Manchester St. Ry., N. H., 118 Atl. 380.

71. **Taxation**—Constitutional.—Act May 11, 1921 (P. L. 479), imposing a State tax on anthracite coal, is not in violation of Const. Art. 9, § 1, providing that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax.—Heisler v. Thomas Colliery Co., Pa., 118 Atl. 394.

72.——Devolution.—A collateral inheritance tax is a tax upon the devolution or right of succession to property, and not a tax upon the property itself.—In re Higgins' Estate, Iowa, 189 N. W., 752.

73.——Joinder of Cause.—To avoid a multiplicity of suits, a suit may be maintained by a taxpayer on behalf of himself and all other taxpayers to enjoin the collection of illegal taxes, and it is not a defense that the particular complainant has an adequate remedy at law.—Hawkins v. Lake County, Ill., 136 N. E. 487.

74.——Public Ground.—That public ground, the primary and substantial use of which is for public purposes, may also be used incidentally for minor or occasional private purposes not interfering with the primary use, does not prevent exemption from taxation, under Revenue Act, § 2.—Sanitary Dist. of Chicago v. Carr, Ill., 136 N. E. 479.